IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 26. 9.2007

Kirpal Singh **...Petitioner**

VERSUS

SGPC **…Respondent**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

Present:- Mrs.Vanita Sapra Kataria, Advocate for the petitioner

Mr.R.s.Riar, Advocate for the respondent

Permod Kohli, J. (Oral)

Questioning the validity, legality and propriety of the order no.889 dated 25.9.2001 (Annexure P-15) relieving the petitioner from service of the Shiromani Gurdwara Parbandhak Committee, the petitioner has filed this writ petition under Articles 226/227 of the Constitution of India. It may be useful to briefly refer to the factual background of the case as emerged from the record.

The respondent-Shiromani Gurdwara Parbandhak Committee is a statutory body constituted under the Sikh Gurdwara Act, 1925 (Punjab Act No.8 of 1925). The petitioner was engaged/appointed as an Assistant Ragi on 1.12.1974 and came to be confirmed as such

vide order no.860 dated 1.1.1975 (Annexure P-1) passed by the Assistant Manager, Sri Darbar Saheb, Sri Amritsar with effect from the date of his appointment. He was later on appointed as a Jathedar Ragi vide order no.295 dated 5.6.1980 passed by the Addl. Manager, Sri Darbar Saheb, Sri Amritsar (Annexure P-2). While serving in the said capacity, the petitioner applied for leave vide his application dated 2.4.2001 (Annexure P-3) for going abroad from 2.5.2001 to 31.10.2001. He also indicated his address abroad. The application (Annexure P-3) was submitted one month in advance as per the prescribed norms. This application (Annexure P-3) was recommended for sanction by the Manager to the Secretary, Shiromani Gurdwara Parbandhak Committee at Amritsar vide his letter dated 6.4.2001 (Annexure P-4). A reminder dated 16.5.2001 (Annexure P-5) appears to have been forwarded for sanction of leave on the ground that other members of the Jatha have already been granted visas. He also requested for sanction of leave from 17.5.2001 to 16.11.2001. The petitioner proceeded on leave on 17.5.2001 allegedly in view of expiry of visa on the said date. It is admitted case of the parties that till then leave of the petitioner had not been sanctioned. However, subsequently, the respondent-employer sanctioned the leave of the petitioner for a period of three months which was to expire on 15.8.2001. The petitioner did not joint duty, on expiry of sanctioned leave and applied for extension of leave vide his letter dated 14.8.2001 (Annexure P-6). It has been brought on record that even prior to that one Gubinder Singh Randhawa, Chief Sewadar of Gursikh Sabha, Canada had also requested the Manager, Sahib Darbar

Sahib, Sri Amritsar for extension of leave of the petitioner vide his letter dated 7.8.2001 (Annexure R-3). The respondent-Management rejected the request of the petitioner for extension of leave and asked him to report for duty immediately, vide order no.4359 dated 8.9.2001 (Annexure P-7). It is alleged that this notice/order was sent to the petitioner under registered cover on 10.9.2001 which was received by him on 24.9.2001 and simultaneously another letter dated 10.4.2001 was posted by ordinary post which was received by him on 24.9.2001. Copy of the postal receipt is placed on record as Annexure P-8. It is further alleged that the petitioner had already got his seat booked for 17.9.2001. However, on account of disturbances in America, the Air Flight was affected and the seat of the petitioner was cancelled. He, however, again booked his seat for 7.10.2001 and faxed an intimation in this respect on 14.9.2001 vide Annexures P-9 and P-10. It is admitted case of the parties that the letter of the petitioner dated 14.9.2001 was placed before the Secretary. It is further alleged in paragraph 14 of the writ petition that on receipt of the intimation that extension of leave has been declined and he is required to report for duty, the petitioner informed the Manager that he is reporting for duty on 9/10.10.2001 vide his letter dated 15.9.2001 (Annexure P-11). It appears that on 24.9.2001, the case of the petitioner was considered by the President and vide the impugned order dated 25.9.2001 (Annexure P-15), the service of the petitioner was dispensed with. It has also been indicated in the impugned order (Annexure P-15) that the President has also taken the opinion of the legal advisor. The petitioner was relieved from service on account of remaining absent

from duty continuously from 15.8.2001 and not reporting for duty, despite registered notice.

The main contention by the counsel appearing for the petitioner is that even though the petitioner had expressed his willingness to join duty, but he was prevented from joining the duty as directed on account of the circumstances beyond his control. The respondent has taken the decision to terminate the services of the petitioner in utter haste and without observing the principles of natural justice.

The plea of the petitioner is resisted by the respondent on the ground that registered notice was forwarded to the petitioner on 6.9.2001, but he avoided the receipt and the registered notice sent on 6.9.2001 was redirected to the sender. Xerox copies of the postal receipt dated 26.9.2001 and the registered envelop mentioning the words " Redirected to the Sender" are placed on record as Annexures R-5 and R-6 with application being CM No.4356 of 2006. The respondent has also placed on record copy of the letter dated 5.9.2001 as Annexure R-1 which was allegedly sent to the petitioner. In this letter, it has been stated that even though earlier three months leave was sanctioned which expired on 15.8.2001 and request of the petitioner for further extension of leave was not acceded to, accordingly, the petitioner was asked to join duty within seven days from the date of issue of letter. It is, however, admitted case of the parties that this letter was never received by the petitioner as the registered envelop was returned back to the sender.

Admittedly, the petitioner's service has been terminated on account of absence from duty. The petitioner has relied upon Rule 4 of

the Rules framed in exercise of the power under Section 132 of the Sikh Gurdwara Act, 1925. It is stated that these rules are statutory in nature and for violation of any rules, the petitioner has right to approach this court by invoking jurisdiction under Article 226 of the Constitution of India and seek the remedy. None of the parties have disputed the statutory nature of rules. Rule 4 relied upon by the petitioner reads as under:-

> "4.Dismissal:
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> (a)The employee can be dismissed in accordance with the below mentioned rule by the appointing authority, but appeal against the dismissal by the President shall lie to the Executive Committee within 30 days from the date of dismissal.
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> (b)Any employee under control of Management of any Department of Gurdwara under Shiromani Gurdwara Parbandhak Committee may prefer an appeal against any punishment of suspension, dismissal, fine, warning etc.
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> Within 30 days from the date of issuance of the order:-
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> (1)Any employee of the Shiromani Committee can be dismissed or degraded for his bad character, dishonesty, drinking or becoming a "Patit" but before he is dismissed or degraded, the allegations in the form of written charge sheet shall be supplied to him along with the statement of allegations, on

the basis of which the charges are leveled against him. Representation against these charges shall be received from the employee within reasonable time and in case he denies these charges or prays for holding an enquiry or the Executive Committee deems it fit, these charges shall be got inquired into in the presence of the employee and for each item of the charge sheet, which has not been admitted, evidence shall be recorded in his presence and the employee shall be entitled to cross-examination these witnesses. In case an employee wishes to produce his defence, the same shall be entertained, but in case if the inquiring committee feels that certain evidence is not necessary, it shall not be permitted to be produced for the reasons to be recorded in writing. Action shall be taken against the employees only when the charge is established.

In view of temporary or probationer employee the above mentioned procedure is not required to be followed. The Committee can remove him at any time.

(ii)In case the employees wish to produce any record or document in their defence, he shall be permitted to do so and if he shall be permitted to inspect the record free of cost.

(iii)Every employee, who has been dismissed or

degraded or removed shall be supplied with the copies of the report of inquiry committee and also final decision of the Executive Committee free from the cost.

(iv) (a)The record pertaining to the dismissal or degradation an employee shall not be destroyed for three years, rather it shall be kept in safe custody.

(c) If an employee is reinstated on exoneration after the suspension he shall be entitled to the arrears of salary of the suspension period."

Learned counsel appearing for the petitioner has placed reliance upon Rule 4(i) whereunder in the event of any action against the employee, the procedure prescribed is required to be adhered to. Procedure indicated in this rule, inter alia, provides for issuance of written charge-sheet, reply by way of representation, then holding of enquiry and providing opportunity to the employee to lead evidence etc. whereas the respondent in its reply has taken a categoric stand that the action against the petitioner has been initiated under Rule 6 of the Rules and Rule 4 of the Rules has no application. For the sake of convenience, Rule 6 is also reproduced hereunder:-

"6. PUNISHMENT

If any employee remains absent from his duties then he can be imposed penalty equivalent to the wages for double of the days of absence. But if anyone remains absent continuously for 10 days then he can be removed by the Committee on such

allegations."

From the perusal of Rule 4 reproduced above, it appears that action contemplated under this Rule is in respect to an employee of the Shiromani Committee who is accused of bad character, dishonesty, drinking or becoming a "Patit". The allegations against the petitioner do not fall under any of these categories. Therefore, Rule 4 will have no application to the case of the petitioner. Rule 6 specifically deals with imposition of punishment for absence from duty. Thus, the case of the petitioner clearly falls within the ambit and scope of this rule. Under this Rule, if an employee remains absent from his duty, he can be imposed penalty equivalent to his wages for double of the days of absence. But if anyone remains absent continuously for 10 days or more then he can be removed by the Committee for such absence. The respondent has also referred to the opinion of the Legal Advisor in paragraph 8 of the written statement wherein it is mentioned by the Legal Advisor that the concerned employee is absent from duties w.e.f. 15.8.2001. As per service Rules he can be relieved from duties on account of continuous absence for 10 days.

It is not in dispute rather it is a settled proposition that absence from duty constitutes misconduct. Penalty for misconduct of an employee causes a stigma and visits with civil consequences. Whenever punishment is sought to be imposed on account of stigma, observance of principles of natural justice becomes necessary. Undisputed facts are that the petitioner was never put to any notice or provided any opportunity of hearing or asked to show cause to explain the circumstances for his absence from duty before passing the

impugned order (Annexure P-15). It has been vehemently argued on behalf of the respondent that Rule 6 does not prescribe for service of any notice or to provide an opportunity to the employee before an action is initiated for absence from duty and thus, the Management was under no obligation to provide any opportunity to the petitioner. This issue is no more res integra. The Hon'ble Supreme Court in the case of **Mafatlal Narandas Barot v. J.D.Rathod, Divisional Controller State Transport, Mehsana and another, AIR 1966 Supreme Court 1364** has held under the similar circumstances as under:-

> "12.It is true that the respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed. The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do only when he knows what the charges levelled against him are and the allegations on which such charges are based. In our judgment, the appellant was entitled to an opportunity to show cause against the action proposed to be taken against him."

A Division Bench of this Court in the case of Jaswant Singh vs. The Shiromani Gurudwara Parbandhak Committee (CWP No.3726 of 1998 decided on 7.3.2000), also reiterated this view by making following observations:-

> "On the merits of the case also, we are satisfied that the termination of the petitioner's service deserves to be nullified. A bare reading of the order passed by the Secretary, SGPC shows that the impugned action has been taken against the petitioner on the specific allegation of misconduct, namely, not joining the duty at Sri Guru Teg Bahadur Sahib Gurudwara, Jind (Haryana) and remaining absent from duty. Admittedly, before passing the impugned order, neither any charge-sheet was issued to the petitioner nor any enquiry was held by the Secretary, SGPC or any other competent authority, so much so that the petitioner was not given even an action oriented notice and opportunity of making representation against the proposed termination of his service on the allegations of misconduct. Thus, there is no escape from the conclusion that the impugned order is vitiated due to violation of the principles of natural justice which are also ingrained in Rule 4 of the Service Rules framed by the Executive Committee of the SGPC."

In view of the law laid down by the Hon'ble Apex Court and the Hon'ble Division Bench of this Court that whenever an action is sought to be initiated in terms of Rule 6, observance of principles of natural justice have to be observed, impugned action against petitioner deserves to be set aside. Learned counsel appearing for the respondent submits that the petitioner was asked to join the duty vide its letter dated 5.9.2001 (Annexure R-1) and this letter itself shows that principle of natural justice has been observed. From the contents of this letter, it is evident that this letter was sent only to communicate the petitioner that his extension of leave has been rejected and he was asked to join duty within 7 days from the date of issuance of this letter. By no stretch of imagination, this letter can be construed to be an opportunity to explain the circumstances for his absence from duty. No opportunity whatsoever was ever provided to the petitioner to explain the circumstances that might have prevented him from joining the duty in time. Even reading of letter (Annexure R-1) clearly indicates that the petitioner was provided seven days time to join duty and that too from the date of issue of letter and not from the date of receipt of the letter. Further more the said letter (Annexure R-1) was never received by the petitioner as the registered envelop was returned back to the sender. The petitioner has stated in the writ petition that he received order no.4359 dated 8.9.2001 (Annexure P-7) vide which the respondent-Management rejected the request of the petitioner for extension of leave and asked him to report for duty immediately,. It is stated that this notice/order was sent to the petitioner under registered cover on 10.9.2001 which was received by

him on 24.9.2001 and simultaneously another letter dated 10.4.2001 was posted by ordinary post which too was received by him on 24.9.2001. The petitioner had already got his seat booked for 17.9.2001. However, on account of disturbances in America, the Air Flight was affected and the seat of the petitioner was cancelled. He, however, again booked his seat for 7.10.2001 and reached Amritsar on 9.10.2001. He claims to have reported for duty, but he was not permitted to join duty in view of his removal from service vide the impugned order dated 25.9.2001 (Annexure P-15). There is another aspect of the matter that the petitioner did inform the respondent his desire for seeking extension of leave, but the extension was not granted. On receipt of the information that his request for extension of leave has not been allowed, he immediately returned back. It was only under the given circumstances that it took him few days to return to India for joining the duty. There is enough material on record to show that the petitioner was prevented from joining the duty immediately, on being asked to do so. Had he been provided any opportunity to explain the circumstances, perhaps the respondent would not have passed the impugned order. In any case the impugned order is violative of principles of natural justice and is not sustainable in law.

In view of the above, the impugned order (Annexure P-15) is hereby quashed. It is directed that the petitioner be reinstated forthwith. He will be deemed to be in service all along. The absence from duty shall not be construed as break in service. However, he will not be entitled to monetary benefit for the interregnum i.e. for the

period of absence upto the date of rejoining the duty. But this period will be counted towards the service. This writ petition accordingly succeeds with above directions.

(PERMOD KOHLI)
JUDGE

26.9.2007
MFK

NOTE:Whether to be referred to Reporter or not:YES